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April 17, 2019

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

**RE: Renewable Power Purchase Agreement between South Carolina Electric
& Gas Company and United States of America
Docket No. 2019- ____ - E**

Dear Ms. Boyd:

South Carolina Electric & Gas Company. ("SCE&G"), in compliance with and pursuant to Public Service Commission of South Carolina ("Commission") Order Nos. 81-214 and 85-347 issued in Docket No. 80-251-E, hereby submits to the Commission for review the attached renewable Power Purchase Agreement ("Renewable PPA") between SCE&G and the United States of America. SCE&G and the United States of America entered into the Renewable PPA effective April 9, 2019. For the reasons stated herein, SCE&G respectfully requests that the Commission accept the Renewable PPA for filing because the terms of the Renewable PPA comply with the intent of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the provisions of Commission Order Nos. 81-214 and 85-347. A summary of the key terms and provisions of the Renewable PPA is set forth below.

The United States of America will own and operate two existing solar photovoltaic systems and one new combined heat and power plant at the Parris Island Marine Corps Recruit Depot in Beaufort County, South Carolina ("Parris Island Facilities"). The Parris Island Facilities will be classified as a qualifying facility under the rules and regulations of the Federal Energy Regulatory Commission, promulgated pursuant to the provisions of Section 210 of PURPA, 16 U.S.C. § 2601, *et seq.*

The Renewable PPA is consistent with the intent of PURPA to encourage the development of qualifying facilities for cogeneration and with the principles which the Commission has established in its orders implementing PURPA. See Order Nos. 81-214, 85-347, and 89-56, all issued in Docket No. 80-251-E. Accordingly, the terms of the Renewable PPA are consistent with the public interest. Based on the foregoing,

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SCE&G respectfully requests that the Commission accept the Renewable PPA for filing and issue an order to that effect. *See Commission Order No. 81-214 at 18-19, Section III, paragraphs 3-5 and Order No. 85-347 at 29-30, Section II, Part J, and at 35-36, Section III, paragraphs 11-12.*

By copy of this letter, we are providing the South Carolina Office of Regulatory Staff ("ORS") with a copy of the Renewable PPA for its records.

Thank you for your assistance and consideration of this matter. If you have any questions, please do not hesitate to contact us at your convenience.

Very truly yours,



Matthew W. Gissendanner

MWG/kms

Enclosure

cc: Jeffrey M. Nelson, Esquire
(both via electronic and U.S. First Class Mail w/enclosure)

EXECUTION VERSION**POWER PURCHASE AGREEMENT FOR NON-FIRM ENERGY FROM A QUALIFYING FACILITY**

This POWER PURCHASE AGREEMENT FOR NON-FIRM ENERGY FROM A QUALIFYING FACILITY ("Agreement") is made and entered into this 9th day of April, 2019 (the "Effective Date"), by and between South Carolina Electric & Gas Company ("SCE&G" or "Buyer"), a corporation organized and existing under the laws of the State of South Carolina, and the United States of America ("Seller"). Seller and Buyer each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Seller owns or will own and operates three Qualifying Facilities (each, individually, a "Facility", and collectively, the "Facilities") located at the Parris Island Marine Corps Recruit Depot in Beaufort County, South Carolina, each as described in more detail on Attachment A; and

WHEREAS, two of the Facilities, Facilities 1 and 2 identified as such on Attachment A hereto, have been fully operational but have not been interconnected with the Interconnecting Utility (the "Existing Facilities"), and one of the Facilities, Facility 3 identified as such on Attachment A, is a new Facility that has not been fully operational and has not been interconnected with the Interconnecting Utility (the "New Facility"); and

WHEREAS, Buyer is willing to purchase and Seller is willing to sell all of the Net Energy of the Facilities subject to the terms and conditions and at the prices set forth in this Agreement; and

WHEREAS, Seller has entered into, or will enter into, the separate and necessary agreements for generator interconnection and for transmission service, as required, pursuant to which Seller assumes contractual responsibility for making any and all transmission-related arrangements, including ancillary services as described in such agreements, between Seller and SCE&G Transmission for delivery of the Facility's Net Energy made available for sale to Buyer; and

WHEREAS, subject to and in a manner consistent with the terms and conditions of this Agreement, each Facility is, or will be, capable of delivering Net Energy to Buyer for the Term of this Agreement; and

NOW THEREFORE, the Parties, intending to be legally bound, hereby agree as follows with respect to each Facility:

ARTICLE I**DEFINITIONS**

All references to Articles and Sections are to those set forth in this Agreement. Reference to any document means such document as amended from time to time and

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reference to either Party includes any permitted successor or assignee thereof. The following definitions and any terms otherwise defined in this Agreement shall apply for all purposes of this Agreement and all notices and communications made pursuant to this Agreement.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person.

"Agreement" means this contract, including all Attachments, for the purchase of Net Energy entered into between Seller and Buyer and as may be amended or modified by the Parties from time to time.

"Attachments" mean the schedules and exhibits that are appended hereto and are hereby incorporated by reference and made part of this Agreement. At the Effective Date, such Attachments include:

"Attachment A": Description of Facilities

"Attachment B": Schedule of Rates

"Attachment C": Insurance Requirements

"Business Day" means any day other than Saturday, Sunday or a legal public holiday as designated in Section 6103 of Title 5, U.S. Code.

"Buyer" or **"SCE&G"** shall have the meaning provided in the introduction, including any permitted successors and assigns.

~~"Buyer's Meter(s)"~~ shall have the meaning provided in Section 7.1 hereof.

"Calendar Year" means the period from January 1 through December 31.

~~"Commercial Operation"~~ with respect to a Facility means the period beginning on the **Commercial Operation Date** and continuing through the Term of this Agreement during which time the Facility is generating Net Energy for sale to Buyer, excluding Test Energy.

"Commercial Operation Date" with respect to a Facility, for purposes of this Agreement, means the **Business Day** following the **Business Day** on which all of the following conditions for **Commercial Operation** have been satisfied:

(a) All **Conditions Precedent** have been satisfied and all requirements under Section 4.1 have been met;

(b) Seller has successfully completed the testing of the Facility that is required under the Facility's applicable Permits, manufacturers' warranties, the Interconnection Agreement and any other Project Contract, and any other prerequisite testing for the commencement of **Commercial Operation**;

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(c) the Facility has achieved initial synchronization with the Transmission System, and has demonstrated to Buyer's satisfaction the reliability of its communications systems and communication with Buyer; and

(d) Seller has submitted to Buyer a certificate of an officer of Seller familiar with the Facility stating that, to the best knowledge of such officer after due inquiry, all Permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Government Agency to construct and to operate the Facility in compliance with applicable law and this Agreement have been obtained and are in full force and effect, and that Seller is in compliance with the terms and conditions of this Agreement and each Project Contract in all material respects.

"Condition Precedent" refers to any condition precedent listed in Section 4.1 hereof.

"Cure Period" shall have the meaning provided in Section 11.1(e) hereof.

"Curtailed Energy" shall have the meaning provided in Section 5.1(e) hereof.

"Delivery Point" means the point(s) where Seller's local distribution system connects to the Transmission System and where Net Energy generated by the Facilities may be delivered to the Transmission System at 12.47 kV.

"Distribution System" means SCE&G's distribution system consisting of electric lines, electric plant, transformers and switchgear used for conveying electricity to ultimate consumers, but not including any part of the Transmission System.

"Effective Date" shall have the meaning provided in the introduction.

"Emergency" means any condition or situation requiring actions or inactions that are reasonably necessary in order to (i) comply with the ERO's Reliability Standards or any other applicable regulation or law, (ii) **preserve public health and safety**, (iii) **limit or prevent damage**, or (iv) **expedite restoration of service**.

"Emergency Condition" means (i) any urgent, abnormal, dangerous, and/or public safety condition that is existing or is imminently likely to result in material loss or damage to a Facility, the Transmission System and/or Distribution System, disruption or generation by a Facility, disruption of service on the Transmission System and/or Distribution System, and/or endangerment to human life or public safety; and, (ii) any circumstance that requires action by the System Operator to comply with the ERO's Reliability Standards, including actions to respond to, prevent, limit, or manage material loss or damage to a Facility, the Transmission System and/or Distribution System, disruption of generation by a Facility, disruption of service on the Transmission System and/or Distribution System, and/or endangerment to human life or public safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or failure to perform as required under this Agreement and/or its Interconnection Agreement, including, without limitation, failure to perform in accordance with Good Utility Practice.

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"Energy" means the amount of electrical energy (including capacity, ancillary services associated with such electrical energy and capacity, and all current and future defined characteristics that count toward resource adequacy or reserve requirements) either used or generated over a period of time, expressed in terms of kilowatt-hour (kWh) or megawatt-hour (MWh) and produced by the Facilities. For purposes hereof, the term Energy shall exclude environmental attributes and any and all state and federal production tax credits, any investment tax credits, tax incentives, or tax grants, and any other tax credits, tax incentives or tax grants which are or will be generated or earned by the Facilities.

"Environmental Liability" means all loss, damage, expense, liability and other claims, including court costs and reasonable attorney fees arising out of or relating to the existence at, on, above, below or near the Facilities of any Hazardous Substance.

"ERO" means the North American Electric Reliability Corporation and its successor, if any.

"Existing Facilities" means those Facilities 1 and 2 identified as such on Attachment A hereto.

"Event of Default" means any of the events listed in Section 11.1 hereof.

"Evergreen Year" shall have the meaning provided in Section 3.1 hereof.

"Facility" means a generating facility described on Attachment A hereto and all equipment used to produce the electric energy generated at such generating facility and being sold under this Agreement, including but not limited to, all facilities necessary with respect to such generating facility to connect to the Delivery Point and produce the Net Energy being sold under this Agreement, and all equipment that is owned or controlled by Seller required for parallel operation of such generating facility with the Transmission System.

"Facility Premise" means the real property, as more particularly described in the Attachment A hereto, on which a Facility will be located.

"FERC" means the Federal Energy Regulatory Commission.

"Force Majeure" shall have the meaning provided in Section 10.1 hereof.

"Good Utility Practice" means any of the practices, methods, standards and acts, (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of owners and operators of power plants in the United States that have the technology, complexity and size similar to a Facility) that, at a particular time in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result and goals (including such goals as efficiency, reliability, economy and profitability) in a manner consistent with applicable facility design limits and equipment specifications and applicable laws and regulations. Good Utility Practice is not intended to

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be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to acceptable practices, methods or acts relevant to the activity and facts in question.

"Government Agency" means the United States of America (not in its capacity as Seller), or any state or any political subdivision thereof, including without limitation, any municipality, township or county, and any domestic entity or body exercising executive, legislative, judicial, regulatory, administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing, any court of competent jurisdiction, or commission or governmental or regulatory authority or instrumentality or authorized arbitral body.

"Hazardous Substance" means any chemical, waste, or other substance (i) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to environmental health, safety or welfare, (ii) which is declared to be hazardous, toxic, or polluting by any Government Agency, (iii) exposure to which is now or hereafter prohibited, limited or regulated by any Government Agency, (iv) the storage, use, handling, disposal or release of which is restricted or regulated by any Government Agency, or (v) for which remediation or cleanup is required by any Government Agency.

"Interconnecting Utility" means that utility (which in this case shall be SCE&G) providing interconnection service for the Facilities to the Transmission System or Distribution System of that utility.

"Interconnection Agreement" means an agreement between the Interconnecting Utility providing interconnection service for the Facilities to the Transmission System or Distribution System of the Interconnecting Utility, as the same may be amended from time to time.

"Interconnection Condition" means that Seller has entered into and executed the Interconnection Agreement(s) for the Nameplate Capacity of the Facilities.

"Interconnection Facilities" means all facilities and equipment between the Facilities and the Delivery Point, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Facilities to the Transmission System or Distribution System.

"Interest Rate" shall have the meaning given to it in Section 8.1(e).

"Nameplate Capacity" shall mean the nameplate facility rating with respect to a Facility.

"Net Energy" means, for the period being considered during the Term, the actual total amount of Energy generated by the Facilities less any Energy generated by the Facilities that

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is consumed for the operation of the Facilities, less any Energy that is consumed on-site by the Seller, and less any losses up to the Delivery Point, as measured according to the metering provisions in Article VII. For the avoidance of doubt, the hourly Net Energy shall be no greater than the sum of the hourly generation of the QFs identified in Attachment A, adjusted for losses as appropriate.

"Net Energy Rate" has the meaning assigned to it in Attachment B.

"New Facility" means Facility 3 identified as such on Attachment A.

"Notice of Completion" shall have the meaning provided in Section 4.2 hereof.

"Party" and "Parties" shall have the meanings assigned to it in the Preamble.

"Permit" means all state, federal and local authorizations, certificates, permits, licenses and approvals required by any Government Agency for the construction, operation and maintenance of a Facility.

"Person" means an individual, partnership, corporation, association, joint stock company, trust, joint venture, unincorporated organization, or Government Agency (or any department, agency, or political subdivision thereof).

"Project Contracts" means this Agreement, and any other contract required to construct, operate and maintain a Facility.

"Public Service Commission of South Carolina" or "SCPSC" shall mean the Public Service Commission of South Carolina or any successor state agency vested with the power and jurisdiction to supervise and regulate the rates and service of South Carolina Electric & Gas Company or its successor.

"PURPA" means the Public Utility Regulatory Policies Act of 1978.

"QF Meters" shall have the meaning provided in Section 7.1 hereof.

"Qualifying Facility" or "QF" means a cogenerator, small power producer, or non-utility generator that has been certified by or self-certified with the FERC as meeting certain ownership, operating and efficiency criteria established by the FERC pursuant to the PURPA, the criteria for which are currently set forth in 18 C.F.R. § 292, et seq. (2006), Section 210 of PURPA, 16 U.S.C. § 824a-3 (2005), 16 U.S.C. 796, et seq. (2006), and Section 1253 of EPAct 2005, Pub. L. No. 109-58, § 1253, 119 Stat. 594 (2005) or, alternatively, analogous provisions under the laws of the State of South Carolina.

"Reliability Standards" mean the reliability standards of the ERO.

"Requirements of Law" means any federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, common law, decree or Permit enacted, adopted, issued or promulgated by any Government Agency.

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"SCE&G Transmission" means the Electric Transmission Department of SCE&G.

"Seller" shall have the meaning provided in the introduction, including any permitted successors and assigns.

"System Operator" means the operators of the Transmission System and/or Distribution System that have the responsibilities for ensuring that the Transmission System and/or Distribution System as a whole operates safely and reliably including without limitation, the responsibilities to balance generation supply with customer load and provide dispatch and curtailment instructions to generators supplying energy to the Transmission System and/or Distribution System, and includes any person or entity delivering any such instruction to Seller.

"System Operator Instruction" means any order, action, requirement, demand, or direction from the System Operator using Good Utility Practice delivered to Seller in a non-discriminatory manner to operate, manage, and/or otherwise maintain safe and reliable operations of the Transmission System and/or Distribution System; provided, however, that a System Operator instruction in response to an Emergency Condition or Force Majeure event relating specifically to a Facility shall be deemed to be non-discriminatory.

"Term" shall have the meaning provided in Section 3.1 hereof.

"Termination Date" shall mean the effective date of any termination of this Agreement pursuant to its terms.

"Termination Notice" shall have the meaning provided in Section 11.2(a) hereof.

"Test Energy" means any Net Energy generated by a Facility and delivered to the Delivery Point prior to the Commercial Operation Date of a Facility.

"Transmission System" means SCE&G's system of electric lines comprised wholly or substantially of high voltage lines, associated system protection, system stabilization, voltage transformation, and capacitance, reactance and other electric plant used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another, or to or from the Delivery Point or to ultimate consumers and shall include any interconnection owned by SCE&G, but shall in no event include any lines that SCE&G has specified to be part of the Distribution System except for any distribution facilities required to accept Net Energy from a Facility.

"Variable Integration Costs" shall have the meaning given to it in Section 5.2(b).

ARTICLE II

FACILITY DESCRIPTION AND QUALIFYING FACILITY STATUS

2.1 Facility Description and Generation Capabilities. A detailed description of each of the Facilities, including, inter alia, its location, technology, Nameplate Capacity, and net output

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(MW), is set forth in Attachment A. A scaled map and drawings that identify with respect to each Facility the Facility Premises, the location of each Facility on the Facility Premises, the location of the Delivery Point(s) and the location of all meters and related measuring equipment, monitoring ~~system~~, and other important ancillary facilities and Interconnection Facilities are included in Attachment A.

2.2 Facility Specifications. Seller, at its sole expense, will design, construct, maintain, provide security for, operate and repair the Facilities (a) according to Good Utility Practice; and (b) to meet the requirements of this Agreement, including but not limited to the Nameplate Capacity and those other specifications listed on Attachment A. Seller shall not expand the Nameplate Capacity of any of the Facilities without Buyer's consent.

2.3 Maintenance of Facility's Status. Throughout the Term of the Agreement, Seller shall use the ~~same~~ source of energy for the Net Energy generated by each Facility and sold to Buyer hereunder, and shall maintain the status of each Facility as a Qualifying Facility and, with respect to the New Facility, a "topping-cycle cogeneration facility" as defined in 18 CFR (s) 292.202(d) throughout the Term of this Agreement. Seller shall at all times keep Buyer informed of any material changes in its business that affects any Facility's status as a Qualifying Facility. Buyer shall have the right, upon reasonable notice of not less than twenty-four (24) hours (and immediately, subject to the terms below, in the case of an Emergency), to read meters, to inspect any Facility and to examine any books, records, or other documents and take any other actions reasonably deemed necessary to perform and/or verify compliance under this Agreement. In the event of an Emergency impacting Buyer's system that occurs at or near any Facility, Buyer shall make reasonable efforts to notify the Seller and make arrangements for an emergency inspection. On or before March 31 of each year during the Term of this Agreement, Seller shall provide Buyer a certificate signed by an officer of Seller certifying that each Facility has continuously maintained its status as a Qualifying Facility during the prior Calendar Year.

ARTICLE HI

TERM, PURCHASE AND SALE

3.1 Term.

The term of this Agreement shall commence on the Effective Date and shall continue for one year from the earliest Commercial Operation Date for any Facility under this Agreement (the "Term"). The Term shall automatically continue in additional yearly increments ("Evergreen Year(s)") until terminated by either Party upon thirty (30) days prior written notice to the other Party, with such termination to be effective at the end of an active yearly increment of the Term. Buyer's obligation to purchase the Net Energy delivered by a Facility as set forth herein shall be effective when such Facility generates Test Energy and shall only apply with respect to Net Energy generated while the applicable Facility is a QF.

3.2 Purchase and Sale.

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(a) Buyer agrees to accept delivery of the Net Energy at the Delivery Point(s) and purchase the entire Net Energy of the Facilities generated and delivered during the Term subject to the terms of this Agreement. Seller agrees to sell to Buyer the entire Net Energy of the Facilities during the Term and acknowledges that Buyer is entitled to receive all Net Energy from the Facilities during the Term. Title to and risk of loss for the Net Energy shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Net Energy at the Delivery Point, free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

(b) Seller will not commence initial delivery of Net Energy to the Delivery Point(s) without the prior written consent of Buyer. With respect to the New Facility, Buyer will purchase Test Energy produced by Seller during Facility testing and start-up at such times and under conditions acceptable to Buyer and Seller and otherwise in accordance with the terms of this Agreement. Representatives of Buyer will have the right to be present during any such testing. Buyer will cooperate with Seller to facilitate Seller's testing of a Facility necessary to achieve Commercial Operation, including coordination of the production and delivery of Test Energy. Seller will provide Buyer not less than ten (10) Business Days' written notice before any testing to establish a Facility's Commercial Operation under this Agreement.

3.3 Net Energy Rate. Buyer shall pay Seller for the Net Energy generated and delivered to Buyer at the Net Energy Rate for the applicable period in which service is provided as set forth in Attachment B. Buyer shall purchase all Test Energy produced by the New Facility during startup and testing at the Net Energy Rate. Seller and Buyer agree that the Net Energy Rate is intended to compensate Seller for all of the Net Energy of the Facilities delivered to Buyer.

3.4 Generator Interconnection and Transmission Service. Seller shall enter into the necessary agreements for generator interconnection, as required, with SCE&G Transmission, and Buyer shall make any transmission-related arrangements for delivery of the Net Energy of the Facilities from the Delivery Point. Seller is responsible for any transmission losses that occur prior to the Delivery Point.

ARTICLE IV**CONDITIONS PRECEDENT**

4.1 Conditions Precedent. Prior to Buyer's obligation to accept Test Energy and Net Energy from any Facility, Seller shall satisfy the following Conditions Precedent for such Facility:

(a) Seller shall have obtained all necessary Permits;

(b) Seller shall have successfully completed all pre-operational testing and commissioning in accordance with manufacturer guidelines;

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(c) Seller shall have obtained insurance policies or coverage in compliance with Article IX;

(d) By Seller's efforts, the Facility shall have been certified by or self-certified with the FERC as a Qualifying Facility; and

(e) Seller shall have satisfied the Interconnection Condition.

4.2 Reasonable Efforts, Notice of Completion, Extension. Upon satisfaction of all Conditions Precedent set forth in Section 4.1, Seller shall provide a written acknowledgement to Buyer ("Notice of Completion") stating and affirming that (i) the Facility is constructed in accordance with the terms and conditions of this Agreement and is ready to deliver Net Energy, and with respect to the New Facility, Test Energy as applicable, as provided in the Agreement; (ii) all Interconnection Facilities have been constructed in accordance with the terms and conditions of this Agreement and the Interconnection Agreement and are available to receive Net Energy from the Facility as well as Test Energy, as applicable, from the New Facility; and (iii) all Conditions Precedent set forth in Section 4.1 have been satisfied.

4.3 Commercial Operation Date. If applicable, Seller will give written notice to Buyer (a) approximately thirty (30) days before Seller expects the Commercial Operation Date to occur and (b) when the Commercial Operation Date has occurred.

ARTICLE V**SELLER'S OBLIGATIONS**

5.1 Design, Construction and Operation of the Facilities. Seller shall:

(a) At its sole expense, design, engineer, and construct each Facility and all related facilities in accordance with Good Utility Practice and the specifications listed on Attachment A.

(b) Seek, obtain, maintain, comply with and, as necessary, renew, and modify from time to time, at Seller's sole expense, the Permits and all other permits, certificates or other authorizations which are required by any applicable laws or Government Agencies as prerequisites to engaging in the sale of Net Energy at the Delivery Point as envisioned by the Agreement and to meeting Seller's obligation to operate each Facility consistently with the terms of the Agreement.

(c) At Seller's sole expense, operate and maintain, provide security for and repair each Facility in accordance with this Agreement and Good Utility Practice.

(d) Comply with all directives of SCE&G Transmission pursuant to the applicable agreements for generator interconnection and transmission service, and cooperate with all reasonable requests by Buyer relating to Buyer's compliance with any such directives relating to deliveries of Net Energy from each Facility. The Parties recognize that Seller's

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compliance with any such directives of SCE&G Transmission due to system conditions on Buyer's Transmission System or Distribution System that require curtailment or interruption of Net Energy deliveries may result in reduced sales hereunder, without liability on the part of either Party. Notwithstanding the foregoing, Buyer shall have no right to curtail or interrupt Net Energy deliveries for economic reasons.

(e) Notwithstanding anything in this Article V to the contrary, no payment shall be due to Seller under Section 8.1 with respect to the Net Energy that is not delivered by Seller to the Delivery Point for any of the following reasons (such Net Energy, "Curtailed Energy"):

(i) delivery of Net Energy is curtailed through any SCE&G Transmission mechanism or procedure of any sort for redispatch, transmission loading, renewable integration procedures, or any similar or successor operating rules, procedures or systems, and for any other reason, in each **case**, in compliance with the Interconnection Agreement;

(ii) there is any curtailment by SCE&G Transmission in accordance with the Interconnection Agreement, or by the System Operator (if other than SCE&G Transmission), or otherwise for delivery of the Net Energy from each Facility, including planned outages for Transmission System network upgrades impacting the Interconnection Facilities;

(iii) an Emergency Condition; or

(iv) an event of Force Majeure.

5.2 General Obligations.

(a) Seller, during the Term of the Agreement, shall pay all present or future federal, state, municipal, or other lawful taxes or fees applicable to Seller, or the Facilities, or by reason of the sale of Net Energy by Seller to Buyer up to and at the Delivery Point under the Agreement, plus all taxes associated with the generation and delivery of the Net Energy.

(b) Seller shall be responsible for the payment of all charges that result from any change in any applicable law that occurs after the Effective Date that imposes new or additional (i) obligations on a Party to obtain or provide transmission service or ancillary services prior to the Delivery Point, or (ii) variable integration charges or imbalance costs, fees, penalties, or expenses, or provides benefits that, in the case of either clauses (i) or (ii), are imposed, assessed or credited by the transmission provider based on the impacts of energy generated by variable generation projects generally (collectively, the **Variable Integration Costs**). Seller shall be responsible for all Variable Integration Costs assessed against Seller, and, as approved by the Public Service Commission of South Carolina, all Variable Integration Costs assessed against Buyer. To the extent any Variable Integration Costs are incurred by Buyer, and Seller is deemed responsible for such costs by the Public Service Commission of South Carolina, Seller shall promptly reimburse Buyer for such Variable Integration Costs.

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(c) Seller shall take all reasonable action to (i) maintain all Permits, rights, privileges, licenses, and franchises necessary or desirable in the ordinary course of its business; and (ii) comply with all Requirements of Law.

(d) Each Facility shall be interconnected with SCE&G's Transmission System in accordance with the requirements for generator interconnection pursuant to the South Carolina Generator Interconnection Procedures, Forms, and Agreements and the Interconnection Agreement.

(e) Seller acknowledges that any written notice and information required by Buyer is solely for monitoring purposes, and that nothing contained in this Agreement shall create or impose upon Buyer any responsibility or liability for the development, construction, operation or maintenance of the Facilities or Interconnection Facilities.

(f) Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement between Seller and SCE&G Transmission. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible under the Interconnection Agreement.

(g) Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facilities as requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Government Agency.

(h) Following the Commercial Operation Date, Seller shall promptly provide to Buyer information requested by Buyer to verify any amounts of delivered Net Energy, or to otherwise audit the Net Energy delivered to Buyer.

ARTICLE VI

ELECTRICITY PRODUCTION

6.1 Forecasting and Availability.

Pursuant to any applicable provision(s) in Seller's retail power agreement, Seller shall promptly notify Buyer of periods of maintenance for the Facilities which impact potential deliveries of Net Energy during Term of this Agreement.

6.2 Communication. Seller shall comply with reasonable requests by Buyer regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

6.3 Seller's Plant Personnel. During the Term, Seller shall employ, or cause a qualified service provider engaged by Seller to employ, qualified personnel for managing, operating and maintaining the Facilities in such manner as to ensure compliance with its obligations

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hereunder and in accordance with applicable law and Good Utility Practice and for coordinating with Buyer.

ARTICLE VII

METERING

7.1 Metering Equipment. The amount of Net Energy delivered to Buyer by the Facilities shall be derived from data measured by the meter(s) and associated telecommunications equipment installed at the Delivery Point(s) by SCE&G Transmission or SCE&G ("Buyer's Meter(s)") pursuant to any agreement between SCE&G Transmission and Seller for interconnection of the Facilities or pursuant to any other agreement between SCE&G and Seller that requires the installation of meter(s) and associated telecommunications equipment which satisfy the requirements to serve as Buyer's Meter(s) under this Agreement. Seller shall authorize SCE&G Transmission or SCE&G to provide meter data to Buyer, and hereby grants Buyer with rights to physically access the Buyer's Meter(s). Seller shall be responsible for paying SCE&G Transmission or SCE&G for all costs, if any, relating to the Buyer's Meter(s), including, without limitation, its procurement, installation, operation, calibration, and maintenance required to provide bi-directional metering capability or to comply with any other requirement of this Agreement. Seller shall ensure in its arrangement with SCE&G Transmission for the Buyer's Meter(s) to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Except as (i) provided in Sections 7.2 and 7.3 and (ii) subject to the readings of the QF Meters (defined below) and the definition of Net Energy, Buyer's Meter(s) shall be used for quantity measurements and billing under this Agreement. Seller, at its sole expense, may install and maintain check meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Net Energy delivered under this Agreement; provided, however, that such equipment shall be operated and maintained in a manner that does not interfere with the installation, maintenance, and operation of Buyer's Meter(s). Seller shall also install metering equipment, acceptable to Buyer, to provide hourly or fifteen (15) minute interval generation data, as required by Buyer, for each QF, as identified in Attachment A ("QF Meters") and shall allow Buyer to have reasonable access to and inspect such QF Meters.

7.2 Measurements. Readings of Buyer's Meter(s) made by Buyer and readings of QF Meters provided by Seller shall be conclusive as to the determination of the amount of Net Energy delivered to Buyer hereunder; provided, however, that if Buyer's Meter(s) and/or QF Meters are out of service or are determined, pursuant to Section 7.3 hereof, to be registering inaccurately, measurement of Net Energy delivered hereunder shall be determined by, in the following order:

- (a) Seller's check meter(s), if installed, tested and calibrated in accordance with the manufacturer's recommendations, and registering accurately; or

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(b) In the absence of an installed, tested and calibrated in accordance with the manufacturer's recommendations, and accurately registering check meter belonging to Seller, making a mathematical calculation if, upon a calibration test of Buyer's Meter(s) and/or QF Meters, a percentage error is ascertainable; or

(c) In the absence of an installed, tested and calibrated in accordance with the manufacturer's recommendations, and properly registering check meter belonging to Seller, and an ascertainable percentage of error in Buyer's Meter(s) and/or QF Meters, estimating by reference to quantities measured during periods of similar conditions when Buyer's Meter(s) and/or QF Meters were registering accurately; or

(d) If no reliable information exists as to the period over which Buyer's Meter(s) and/or QF Meters were registering inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy began at a point in time midway between the testing date and the last previous date on which such meter was tested and found to be accurate; provided, however, that the deemed period of the inaccuracy shall not exceed one hundred eighty (180) days.

7.3 Testing and Correction. The accuracy of Buyer's Meter(s) shall be tested and verified by Buyer annually. Buyer shall have the right, at its own expense, to test and verify Seller's meter(s) with respect to any Facility upon reasonable notice, provided such testing shall not exceed one (1) test during ~~a Calendar Year~~ without just cause. ~~If Seller has installed check meters in accordance with Section 7.1 hereof, Seller shall test and verify such meters annually.~~ All QF Meters shall be tested and calibrated in accordance with the manufacturer's recommendations, and to the performance standards described in South Carolina Code of State Regulations Chapter 103 (Public Service Commission), section 323 with testing performed using calibrated secondary voltage and current sources. Each Party shall bear the cost of the required routine testing of its own meters.

(a) ~~If either Party disputes a meter's accuracy or condition, it shall so advise the meter's owner in writing. The meter's owner shall, within fifteen (15) days after receiving such notice, advise the other Party in writing as to its position concerning the meter's accuracy and reasons for taking such position. If the Parties are unable to resolve their disagreement through reasonable negotiations, either Party may submit such dispute to an unaffiliated third-party engineering company mutually acceptable to the Parties to test the meter.~~

(b) ~~Should any meter be found to be registering within a one percent (1%) variance, the Party contesting the meter's accuracy shall bear the cost of inspection; otherwise, such cost shall be borne by the meter's owner. Any repair or replacement of such a meter found to be operating beyond the permitted one percent (1%) variance shall be made at the expense of the owner of that meter as soon as practicable, based on the third-party engineer's report. If, upon testing, any meter is found to be in error by an amount greater than a one percent (1%) variance, such meter shall be repaired or replaced promptly, any previous recordings by such meter shall be adjusted in accordance with Section 7.2, any prior payments made for Net Energy and/or invoices~~

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for payments not yet made shall be adjusted to reflect the corrected measurements determined pursuant to Section 7.2. If the difference of the payments actually made by Buyer minus the payment based upon the corrected measurements is a positive number, Seller shall pay the difference to Buyer; if the difference is a negative number, Buyer shall pay the difference to Seller. In either case, the Party paying such difference shall also pay interest as described in Section 8.1(e) for late payments and such payment (including such interest) shall be made within ten (10) days of receipt of a corrected billing statement.

7.4 Maintenance and Records. Each Party has the right to be present whenever the other Party tests and/or calibrates the equipment used in measuring or checking the measurement of the Net Energy delivered hereunder. Each Party shall endeavor to give notice of five (5) days, but in no event less than forty-eight (48) hours, to the other Party in advance of taking any such actions. The records from the measuring equipment remain the property of Seller or Buyer, respectively, but, upon request, each Party will provide access to the other, upon reasonable notice and during normal business hours, to review the Party's metering and billing and maintenance records, including supporting documentation, necessary to verify the accuracy of bills. Each Party is permitted to audit such records of the other Party no more frequently than once each Calendar Year.

ARTICLE VIII**BILLING AND PAYMENT**

8.1 Billing and Payment. With respect to each Facility:

(a) Buyer shall read the Buyer's Meter(s) or cause such meter(s) to be read as soon as practicable after the last day of the previous calendar month and shall report such reading(s) for the Net Energy delivered for the previous calendar month to Seller.

(b) Seller shall read the QF Meter(s) or cause such meter(s) to be read as soon as practicable after the last day of the previous calendar month and shall report such reading(s) for the Net Energy delivered for the previous calendar month to Buyer.

(c) Seller shall create and send an invoice to Buyer based on Buyer's Meter(s) readings, QF Meter reading(s), and the resulting deliveries of Net Energy.

(d) Buyer's payment to Seller for Net Energy received shall be paid by electronic funds transfer by the twentieth (20th) of each month or thirty (30) days following Buyer's receipt of Seller's invoice, whichever is later. If such date falls on a weekend or legal holiday, the due date shall be the next Business Day.

(e) Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at a rate equal to the average daily prime rate as determined from the "Money Rates" section of the Wall Street Journal (the "Interest Rate"), for the days of the late payment period multiplied by the number of days elapsed from and including the due date, to but excluding the payment date. In the event this

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index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

(f) If either Party hereto shall find at any time within one (1) year after the date of any payment hereunder that there has been an overcharge or undercharge, the Party finding the error shall promptly notify the other Party in writing. In the event of an undercharge, **Buyer**, within thirty (30) days of the date of the notice of error, shall pay the amount due plus interest accruing at the Interest Rate from the time of payment of the undercharge through the date of payment correcting the undercharge. In the event of an overcharge, **Seller**, within thirty (30) days of the notice of error, shall refund the overpayment plus interest accruing at the Interest Rate from the time of payment of the overcharge through the date of payment correcting the overcharge.

(g) Each Party shall have the right, at its sole expense during normal business hours, to examine the other Party's records, but only after prior notice and only to the extent necessary to verify the accuracy of any statement, charge, notice, or computation made hereunder.

ARTICLE IX**INSURANCE REQUIREMENTS**

At all times during the Term of this Agreement, **Seller** shall maintain at its ~~Own~~ expense insurance policies for the Facilities and their tangible assets in such amounts and against such risks and losses as set forth in Attachment C hereto. Within ten (10) Business Days after receipt of a request for the same from **Buyer**, **Seller** shall deliver to **Buyer** a certificate of insurance for any or all policies maintained in accordance with this Article IX, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions. The insurance requirements of Attachment C may be satisfied in whole or in part through self-insurance by the Seller. If Seller elects to be self-insured, the Seller shall deliver to **Buyer**, upon **Buyer's** written request, a letter to **Buyer** that the Seller self-insures and describing the extent of such self-insurance. If Seller ceases to self-insure at any time during the Agreement Term, Seller shall immediately notify **Buyer** in writing and the provisions of Attachment C regarding comprehensive general liability insurance, automobile liability and such additional insurance as may be required by the applicable laws, rules or regulations shall be reinstated. Seller shall, at that time, be required to furnish certificates of insurance to **Buyer** as set forth in Attachment C.

ARTICLE X**FORCE MAJEURE**

10.1 Force Majeure. Force Majeure is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and not caused by the negligence

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or lack of due diligence of the Party claiming Force Majeure or that Party's contractors or suppliers, and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in a Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). However, the obligation to use reasonable diligence shall not be interpreted to require resolution of labor disputes by acceding to demands when such course is inadvisable in the discretion of the Party having such difficulty. Payment of money owed shall not be excused by Force Majeure.

10.2 Remedial Action. A Party shall not be liable to the other Party to the extent the first Party is prevented from performing its obligations due to an event of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take all reasonable actions necessary to remove such inability with all due speed and diligence. Such partially performing or nonperforming Party shall be prompt and diligent in attempting to remove the cause of its failure to perform. Neither Party shall be required to remedy, in whole or in part, an event of Force Majeure if such remedy is inconsistent with Good Utility Practice. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure.

10.3 Exclusions from Definition of Force Majeure. Notwithstanding anything in the Agreement to the contrary, "Force Majeure" shall not mean:

(a) Inclement weather affecting construction, start-up, or operation of a Facility or related facilities that does not otherwise meet the definition of ~~"Force Majeure;"~~

(b) ~~Changes in market conditions or governmental action that affect Buyer or Seller, as applicable, the cost of Seller's supply of Net Energy from the Facilities, or the ability of Buyer to obtain energy at a rate lower than the Net Energy Rate and/or other pricing provisions agreed upon by the Parties pursuant to this Agreement;~~

(c) ~~Equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the control of a Party;~~

(d) ~~Unavailability of equipment, repairs or spare parts for a Facility, except to the extent due to a qualifying event of Force Majeure;~~

(e) ~~Failure to obtain on a timely basis and maintain a necessary Permit or other regulatory approval or any undue delay in obtaining, maintaining, or renewing any Permit; or~~

(f) ~~Scheduled maintenance on the Distribution System or Transmission System.~~

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10.4 Notice. In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable after the occurrence of the Force Majeure event, notify the other Party in writing of the nature, ~~cause~~, date of commencement thereof, and the anticipated extent of any delay or interruption in performance.

ARTICLE XI

DEFAULT, TERMINATION, REMEDIES

11.1 Events of Default. Each of the following shall constitute an Event of Default with respect to any Facility:

(a) a Party fails to make when due, any payment required pursuant to this Agreement;

(b) any of the representations, warranties, or covenants made by a Party in this Agreement is false or misleading in any material respect, or not performed as required in a timely manner, and is not cured within the applicable Cure Period;

(c) a Party breaches any provision of the Agreement not specifically enumerated in this Section 11.1, and such breach is not cured within the applicable Cure Period; provided, however, there is no Cure Period for those breaches or Events of Default referenced in Section 11.1(e)(III) below;

(d) a Party fails to maintain in full force and effect any Permit necessary for such Party to perform its obligations under this Agreement; .

(e) ~~Except~~ as otherwise provided herein, any defaulting Party shall have the following cure periods to accomplish the cure of any breach before it becomes an Event of Default (the "Cure Period"):

(I) For breach of a monetary obligation: ten (10) days following delivery of written notice that a payment is due unless such payment is contested; and

(II) For breach of a nonmonetary obligation (other than as provided in Section 11.1(e)(III) below): thirty (30) days following delivery of written notice of such breach; provided, that such defaulting Party shall have an additional period of time to cure such nonmonetary breach so long as the defaulting Party is making a good faith effort to cure the breach, the total cure period not to exceed sixty (60) days in the aggregate.

(III) ~~Notwithstanding~~ anything else herein to the contrary, there is no Cure Period for (A) breaches of the requirements to use the same source of energy for the Net Energy and to maintain the status of a Facility as a Qualifying Facility and, with respect to the New Facility, a "topping-cycle cogeneration facility" as defined in 18 CFR (s) 292.202(d) pursuant to Section 2.3; or (B) failure to comply with all directives of SCE&G Transmission pursuant to the applicable agreements for generator interconnection and transmission

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service, and cooperate with all reasonable requests by Buyer relating to Buyer's compliance with any such directives relating to deliveries of Net Energy from a Facility in accordance with Section 5.1(d).

(f) An Event of Default shall not have occurred hereunder until the proper notice has been delivered and the applicable Cure Period has expired without the breach being cured.

11.2 Remedies for Default.

(a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action, if any, under Section 11.1, the non-defaulting Party may terminate the Agreement by notifying the defaulting Party in writing (the "Termination Notice") of the decision to terminate with respect to the Facility or Facilities that are the subject of the Event of Default and the effective date of the termination (the "Termination Date"), and/or exercise all remedies available at law or in equity.

(b) Termination of this Agreement for any reason shall not affect the accrued rights, amounts owed, or other obligations of either Party as of such termination, and the Parties agree that in exercising its legal and equitable remedies in connection with an Event of Default, the non-defaulting Party shall be entitled to collect from the defaulting Party all reasonable costs and expenses (including the reasonable expenses and fees of the non-defaulting Party's counsel).

(c) Buyer shall have the right to refuse delivery of any Net Energy that does not satisfy any warranties set forth in Section 3.2 or to claim actual damages incurred by Buyer for any such Net Energy accepted by Buyer without knowledge of its noncompliance. In addition, in the event that Seller shall not be in compliance with Section 5.1(d), Buyer shall have the right to refuse deliveries of Net Energy immediately without the passage of any applicable Cure Period or grace period.

(d) If an Event of Default of a Party shall wholly or partly affect the performance (or the ability to perform) of the other Party under this Agreement, then any non-performance of the non-defaulting Party shall be excused to the extent affected by the Event of Default.

11.3 LIMITATION OF LIABILITY. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT, OR OTHERWISE EXCEPT WITH RESPECT TO ANY OF THE FOREGOING DAMAGES THAT ARE INCLUDED IN ANY CLAIM BY A THIRD PARTY FOR WHICH A PARTY IS INDEMNIFIED HEREUNDER.

11.4 Termination for Bankruptcy or Insolvency of Buyer. Notwithstanding anything else herein to the contrary, this Agreement and Buyer's obligations hereunder are contingent

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upon Buyer's continued financial solvency throughout its Term. The Agreement and **Buyer's** obligations hereunder shall terminate upon **Buyer** or an entity that owns or controls **Buyer** instituting or having instituted against it proceedings under the federal bankruptcy law or other insolvency law; ceasing the conduct of active business; having a receiver appointed for it or its assets or properties; making an assignment for the benefit of creditors; or admitting in writing its inability to pay its debts as they become due. The foregoing shall not constitute an **Event of Default**. For the avoidance of doubt, upon the occurrence of any of the events triggering termination pursuant to this Section 11.4, **Buyer** shall have no further obligation to purchase any output (Energy or otherwise) from the Facilities.

ARTICLE XII

REPRESENTATIONS, WARRANTIES, COVENANTS

12.1 Mutual Representations and Warranties.

(a) Each Party represents and warrants to the other Party that, as of the **Effective Date** and throughout the Term:

(i) it is duly organized or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its organization, incorporation or formation;

(ii) it has the power to execute and deliver this **Agreement** and to perform its obligations under this **Agreement** and has taken all necessary corporate, limited liability company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;

(iii) its execution and delivery of this **Agreement** and its performance of its obligations under this **Agreement** do not violate or conflict with any law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;

(iv) except as provided in Sections 13.8 and 13.9, all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any **Government Agency** that are required to have been obtained or made by it at the time this representation is made with respect to this **Agreement** have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with; and

(v) this **Agreement** constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms.

(b) **Seller** represents and warrants that each **Facility** is and **Seller** covenants that each **Facility** shall remain at all times during the Term, a **Qualifying Facility** and, with

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respect to the New Facility, a "topping-cycle cogeneration facility" as defined in 18 CFR (s) 292.202(d).

12.2 **No Implied Warranties.** Except as expressly set forth in this Agreement, Seller makes no representations or warranties concerning Net Energy delivered under this Agreement. Seller expressly disclaims any implied warranties of merchantability or fitness for a particular purpose.

ARTICLE XIII**MISCELLANEOUS**13.1 **Assignment.**

In the event that Seller, directly or indirectly, transfers all or any of its interests in any Facility, or assigns this Agreement, this Agreement shall terminate subject to Section 13.10 below. Buyer may pledge, encumber, or assign this Agreement, in whole or in part, to any Person (including any Affiliate of Buyer) without any restriction; provided, however, that any such assignment by Buyer (other than an assignment to its Affiliate or after which assignment Buyer remains liable hereunder) that gives Seller reasonable grounds for financial insecurity about the ability of Buyer's assignee or successor to perform the obligations of Buyer hereunder shall be subject to the approval of Seller which shall not be unreasonably withheld.

13.2 **Notices.** Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to Seller: United States of America
 Utilities Acquisition
 U.S. Naval Facilities Engineering Command Southeast
 Building 903
 NAS Jacksonville, FL 32212-0030

With a copy to:

If to Buyer: South Carolina Electric & Gas Company
 220 Operation Way, Mail Code P-26
 Cayce, SC 29033
 ATTN: Power Marketing Manager

With a copy to: South Carolina Electric & Gas Company
 220 Operation Way, Mail Code D-308
 Cayce, SC 29033

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ATTN: General Counsel

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand, the next Business Day after deposit by the sending Party if delivered by overnight courier, and on the third Business Day after deposit by the sending Party if delivered by U.S. mail.

13.3 Integration; Amendment. The Agreement, together with all Attachments, constitutes the entire agreement between the Parties relating to the transaction(s) described herein and supersedes any and all prior oral or written understandings. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

13.4 Governing Law. The Agreement is made in the State of South Carolina and shall be interpreted and governed by the laws of the State of South Carolina and/or the laws of the United States, as applicable, without reference to its conflict of laws provisions.

13.5 Severability. Should any provision of the Agreement be or become void, illegal, or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in force. The Parties will, however, use their reasonable efforts to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and the Agreement as a whole.

13.6 Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under the Agreement.

13.7 Assent Not Waiver of Future Breach. No assent, express or implied, by either Party to any breach of the Agreement by the other Party shall be deemed to be a waiver of any subsequent breach.

13.8 Filing Agreement with the Public Service Commission of South Carolina. This Agreement is required to be filed by Buyer with the SCPSC within ten (10) days of its execution. Buyer and Seller understand and agree that, for purposes of this filing, this Agreement will be filed with the SCPSC in unredacted form. Buyer shall use commercially reasonable efforts to satisfy such filing requirement and shall provide Seller with written notice promptly following the satisfaction of such filing requirement.

13.9 Review by SCPSC. This Agreement is subject to review by the SCPSC upon complaint by either Party, or pursuant to its own motion, and the terms herein may be modified in whole or in part or declared null and void by the SCPSC.

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(a) Provision of Information to the SCPSC. Buyer reserves the right to provide to the SCPSC, upon request, information pertaining to this Agreement including, but not limited to records of the Facilities' generation output and Buyer's purchases thereof, including copies of monthly statements of power purchases and data from meters and telemetering equipment installed at the Facilities. Buyer will advise Seller of the furnishing of any information.

(b) Cooperation with the SCPSC. Buyer and Seller agree to work together in good faith to support the filing of this Agreement with the SCPSC, including providing response to any information requests, data requests, and/or requests for interviews, and participation in any investigation, hearing, and/or appeal, as applicable.

(c) Termination. In the event that the SCPSC issues an order or other such regulatory directive with modification, suspension, investigation or other condition that has an adverse effect on either Party, then the Parties agree to negotiate in good faith for a period of thirty (30) days an amendment to this Agreement that complies with such SCPSC order or directive. If the Parties cannot reach an agreement, either Party may terminate this Agreement upon ten (10) days prior written notice to the other Party and neither Party shall have any obligation, duty or liability to the other arising hereunder under any claim or theory ~~whatsoever except~~ as to costs and balances, any other obligations incurred or accrued prior to the effective date of such termination, and those obligations surviving termination or expiration of this Agreement as described in Section 13.10.

13.10 Survival. The termination of this Agreement shall not discharge any Party from any obligation it owes to the other Party hereunder by reason of any ~~transaction~~, cost, loss, damage, expense or liability which shall occur or arise (or the circumstances, events or bases which shall occur or arise) prior to or as a consequence of such termination. It is the intent of the Parties hereby that any obligation owed (whether the same shall be known or unknown at the termination of this Agreement or whether the circumstances, events or bases of the same shall be known or unknown at the termination of this Agreement), including from circumstances occurring prior to termination but not known at termination, will survive the termination of this Agreement. In addition, the provisions within Articles XI and XIII (and any provisions or definitions referenced therein necessary to the administration of such Articles) shall survive the termination of this Agreement. In addition, for twenty-four (24) months after the expiration or termination of this Agreement, all audit rights of Buyer herein shall survive such termination and expiration of this Agreement.

13.11 Mobile-Sierra. ~~Notwithstanding any provision of this Agreement,~~ neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" application of the

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~~“(just and reasonable”~~ standard of review set forth in ~~United Gas Pipe Line Co. v. Mobile Gas Service Corp.~~, 350 U.S. 332 (1956) and ~~Federal Power Commission v. Sierra Pacific Power Co.~~, 350 U.S. 348 (1956), and clarified by ~~Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish~~, 554 U.S. 527 (2008).

~~[Signature]~~ Page Follows]

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IN WITNESS WHEREOF, the Parties have caused the Agreement to be duly executed as of the day and year first above written.

Seller:

United States of America,
Contracting Officer
US Naval Facilities Engineering Command Southeast

By: Robert B. Garske

Name: Robert B. Garske

Title: Supervisory Contract Specialist

Buyer:

South Carolina Electric & Gas Company,
a South Carolina corporation

By: Daniel F. Kassis

Name: Daniel F. Kassis

Title: Vice President, Customer Relations & Renewables



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ATTACHMENT A - Description of Facilities

ATTACHMENT B - Schedule of Rates

ATTACHMENT C - Insurance Requirements

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ATTACHMENT ADescription of Facility 1

1. Site

See Site Plan provided as Exhibit A-1, Single-Line Drawing A-1, and Single-Line Drawing A-1 (Site) provided. Scalable versions of all technical drawings included in this Agreement will be stored in SCE&G's document management system.

2. Structure

The ground-mounted solar photovoltaic system is comprised of totaling 15,086 335W_{DC} stc modules (Hyundai HIS-S335RI) mounted on fixed racking systems at a tilt angle of 25° and with an azimuth of 180°. The array is comprised of six sub-arrays. The sub-arrays are connected to the local customer 12.47kV distribution system through six inverters and three step-up transformers. 4 of the inverters are nominally rated at 750kW (Solectria SGI 750 XTM), and the remaining two inverters are nominally rated at 500kW (Solectria SGI 500 XTM). Two inverters each are connected to a three-winding step up transformer with a 12.47kV secondary voltage. Two 1,500 kVA transformers serve pairs of 750kW inverters and a 1,000 kVA transformer serves the pair of 500kW inverters. The AC output of each inverter is measured at the 380V primary voltage with a utility-grade power meter.

3. Equipment

- (i) **Solar photovoltaic electric generating facility:** see approved One-Line
- (ii) **Technology:** see approved Single-Line
- (iii) **Nameplate Capacity:** 4.0 MW-AC
- (iv) **Operating Voltage(kV):** 12.47 kV at the Point of Interconnection as specified in the Interconnection Agreement
- (v) **Project Controls:** To be implemented as specified in the Interconnection Agreement.

4. Interconnection

The ground mounted PV array is connected at 12.47kV to pole 800, feeder G of the Parris Island electrical distribution system, which terminates to a pad-mounted gas-insulated switchgear assembly adjacent to the existing SCE&G substation and ultimately to SCE&G transformer 2. Note that Feeder G can be alternately fed through customer-side switching from SCE&G transformer 1. The Interconnection Agreement was fully executed as of March 23, 2018.

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5. Facility Security

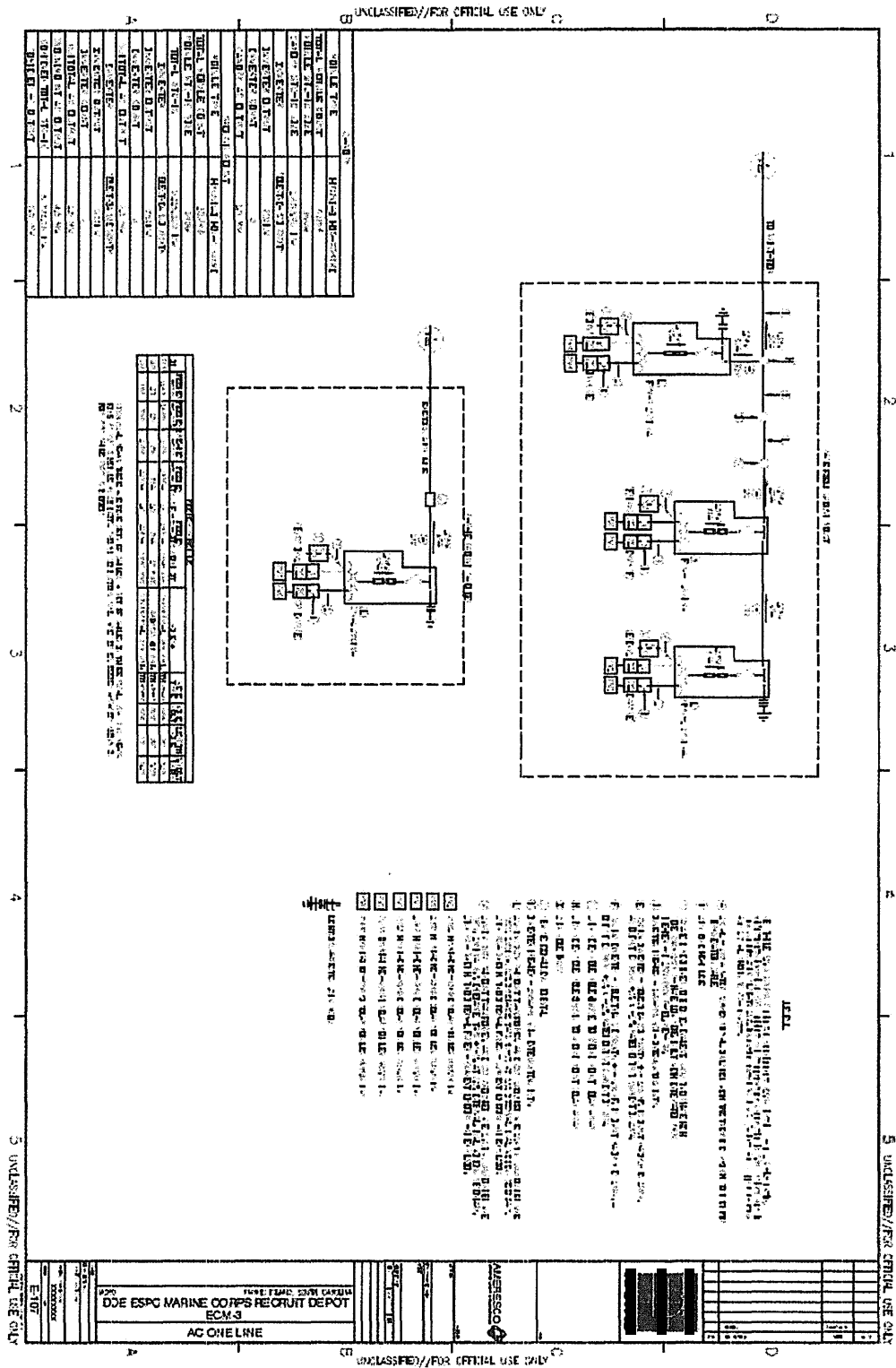
Details provided to Buyer Three (3) months before Commercial Operation Date

6. Metering

Utility Meter provided by SCE&G and QF Meter provided by Seller, both pursuant to Article VII of this Agreement.

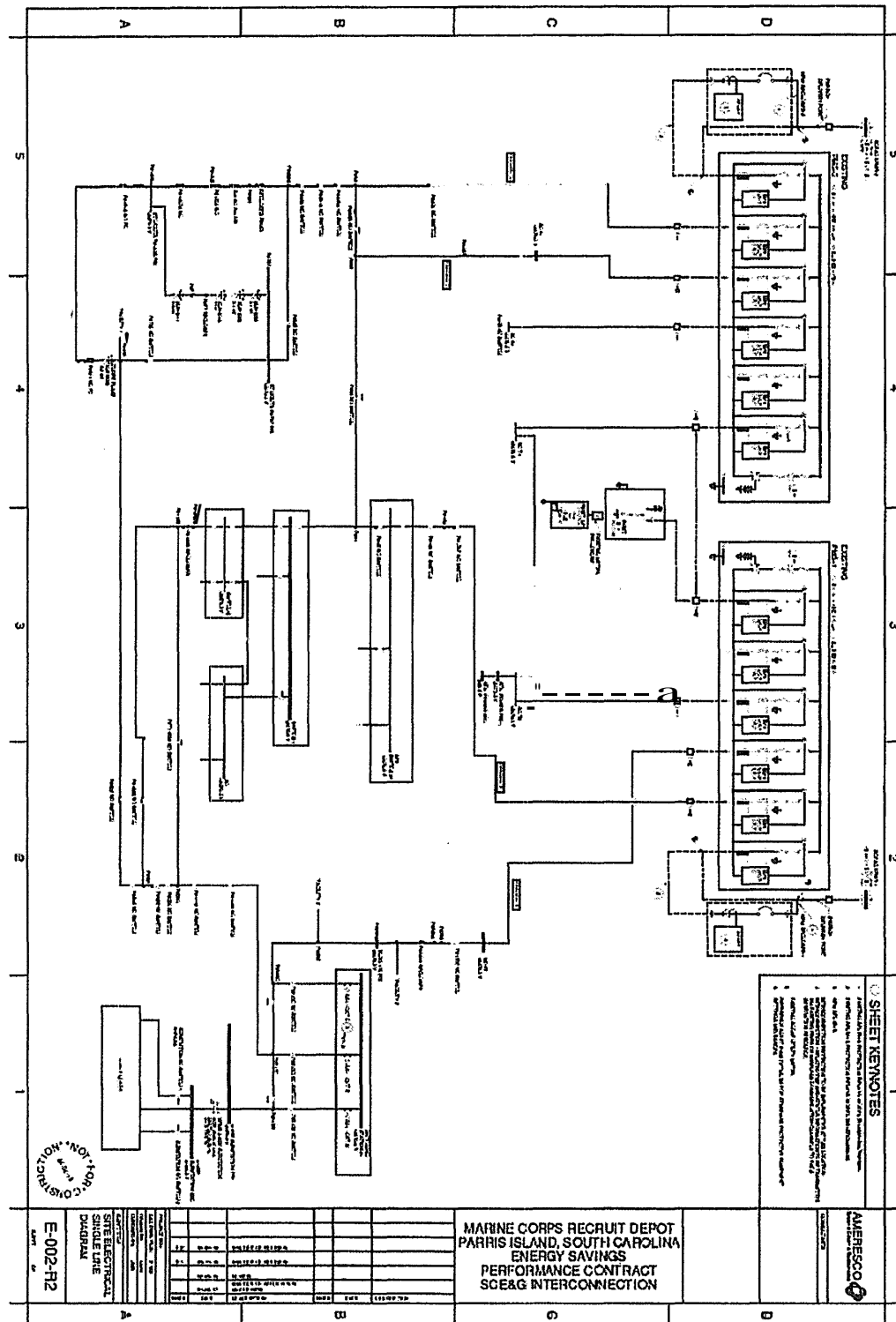
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Single-Line Drawing A-1



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Single-Line Drawing A-1 (Site)



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ATTACHMENT ADescription of Facility 2

1. Site

See Site Plan provided as Exhibit A-2, Single-Line Drawing A-1 (for Facility 1), and Single-Line Drawing A-1 (Site) (for Facility 1) provided. Scalable versions of all technical drawings included in this Agreement will be stored in SCE&G's document management system.

2. Structure

The canopy-mounted solar photovoltaic system is comprised of totaling 4,883 355W_{DC}, 17.5% modules (Hyundai HIS-S355RI) mounted on fixed racking systems at a tilt angle of 7° and with an azimuth of 192°. The array is organized into two sub-arrays. The sub-arrays are connected to the local customer 12.47kV distribution system through two inverters and one step-up transformer. The two inverters are nominally rated at 750kW (Solectria SGI 750 XTM). Two inverters each are connected to a three-winding step up transformer with a 12.47kV secondary voltage. One 1,500 kVA transformer serves the pair of 750kW inverters. The AC output of each inverter is measured at the 380V primary voltage with a utility-grade power meter.

3. Equipment

- (i) Solar photovoltaic electric generating facility: see approved One-Line
- (ii) Technology: see approved Single-Line
- (iii) Nameplate Capacity: 1.5 MW-AC
- (iv) Operating Voltage(kV): 12.47 kV at the Point of Interconnection as specified in the Interconnection Agreement
- (v) Project Controls: To be implemented as specified in the Interconnection Agreement

4. Interconnection

The canopy mounted PV array is connected at 12.47kV to the primary tap serving building 281 on feeder E of the Parris Island electrical distribution system, which terminates to a pad-mounted gas-insulated switchgear assembly adjacent to the existing SCE&G substation and ultimately to SCE&G transformer 1. Note that Feeder E can be alternately fed through customer-side switching from SCE&G transformer 2. The Interconnection Agreement was fully executed as of March 23, 2018.

5. Facility Security

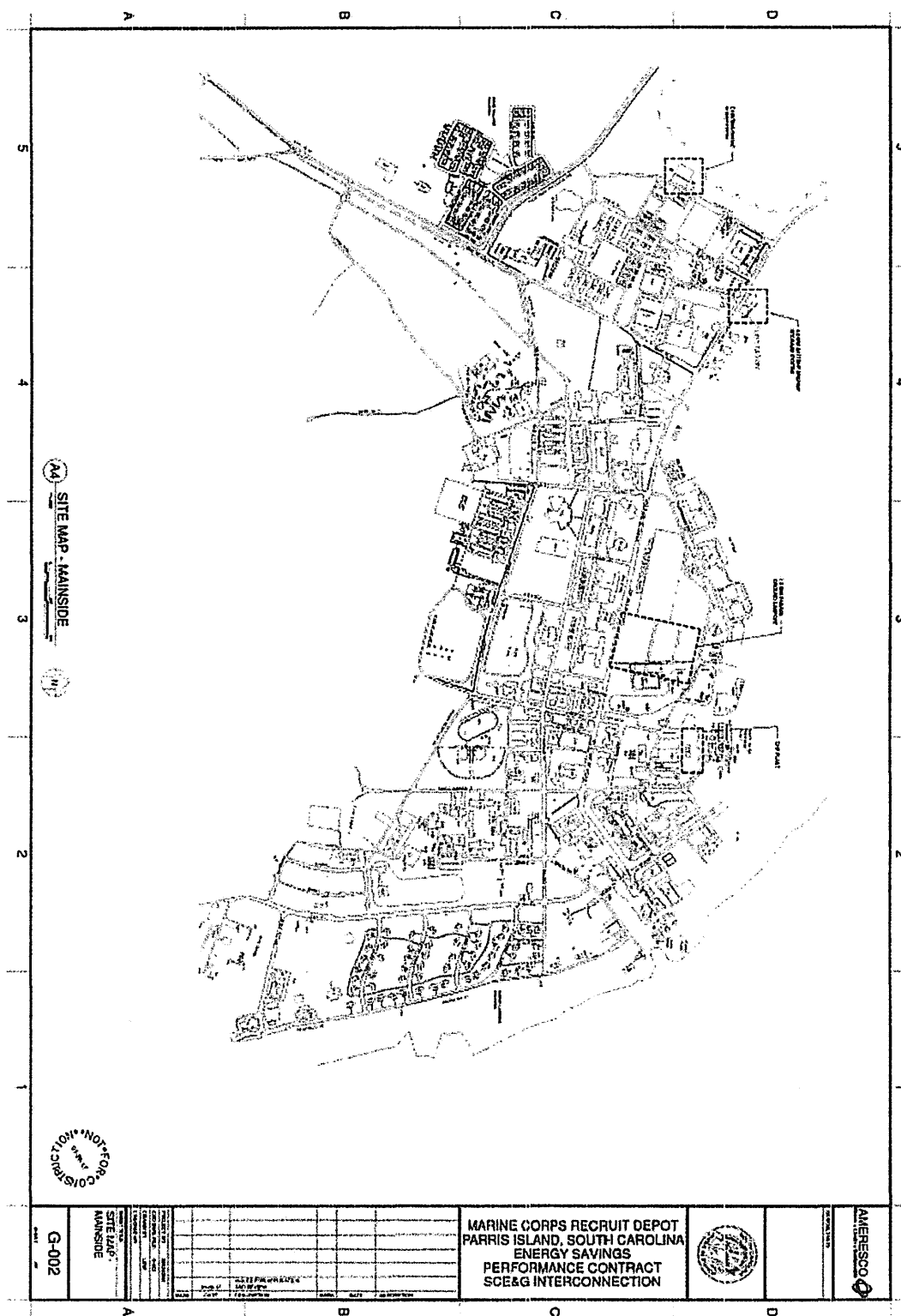
EXECUTION VERSION

Details provided to Buyer Three (3) months before Commercial Operation Date

6. Metering

Utility Meter provided by SCE&G and QF Meter provided by Seller, both pursuant to Article VII of this Agreement.

EXECUTION VERSION

Exhibit A-2

EXECUTION VERSION

Single-Line Drawing A-2

See Single-Line Drawing A-1 provided for Facility 1

EXECUTION VERSION

ATTACHMENT ADescription of Facility 3

1. Site

See Site Plan provided as Exhibit A-2 (for Facility 2), Single-Line Drawing **A-3**, and **Single-Line Drawing A-1 (Site) (for Facility 1) provided**. Scalable versions of all technical drawings included in this Agreement will be stored in SCE&G's document management system.

2. Structure

The combined heat and power plant includes four stationary generation units of varying capacities:

1. **Quantity 1: Solar Turbines Centaur 40** ~~—this unit operates on natural gas and is intended to operate continuously except for periods of maintenance or fuel curtailment. It has a nominal gross ISO rating of 3,362 kW at unity power factor. The generator end is oversized with a 5.6 MW rating. The unit is connected without transformation to the customer 12.47kV distribution system through metal-clad drawout switchgear at the plant. The switchgear includes dedicated revenue-grade metering at the generator circuit breaker. The waste heat from this turbine is used to generate steam for distribution and use on the Parris Island site. This unit is therefore a "topping-cycle cogeneration facility" as defined in 18 CFR (s) 292.202(d) (which will be maintained throughout the Term as a Qualifying Facility) with operation where the primary fuel use is for operating a prime mover to generate electrical energy, with recovery of the resultant waste heat.~~

3. Equipment

- (i) **CHP electric cogeneration facility:** see approved **One-Line**
- (ii) **Technology:** see approved **Single-Line**
- (iii) **Nameplate Capacity:** 5.6 MW-AC
- (iv) **Operating Voltage(kV):** 12.47 kV at the Point of Interconnection as specified in the Interconnection Agreement
- (v) **Project Controls:** To be implemented as specified in the Interconnection Agreement.

4. Interconnection

The combined heat and power plant generation sources are aggregated in 12.47kV switchgear (**SGR-101**) and low-voltage switchgear (**SGR-102**) and connect to the Parris

EXECUTION VERSION

Island 12.47kV electrical distribution feeder near pole 269 on Feeder E. Feeder E terminates to a pad-mounted gas-insulated switchgear assembly adjacent to the existing SCE&G substation and ultimately to SCE&G transformer 1. Note that Feeder E can be alternately fed through customer-side switching from SCE&G transformer 2. The Interconnection Agreement was fully executed as of March 23, 2018.

5. Facility Security

Details provided to Buyer Three (3) months before Commercial Operation Date

6. Metering

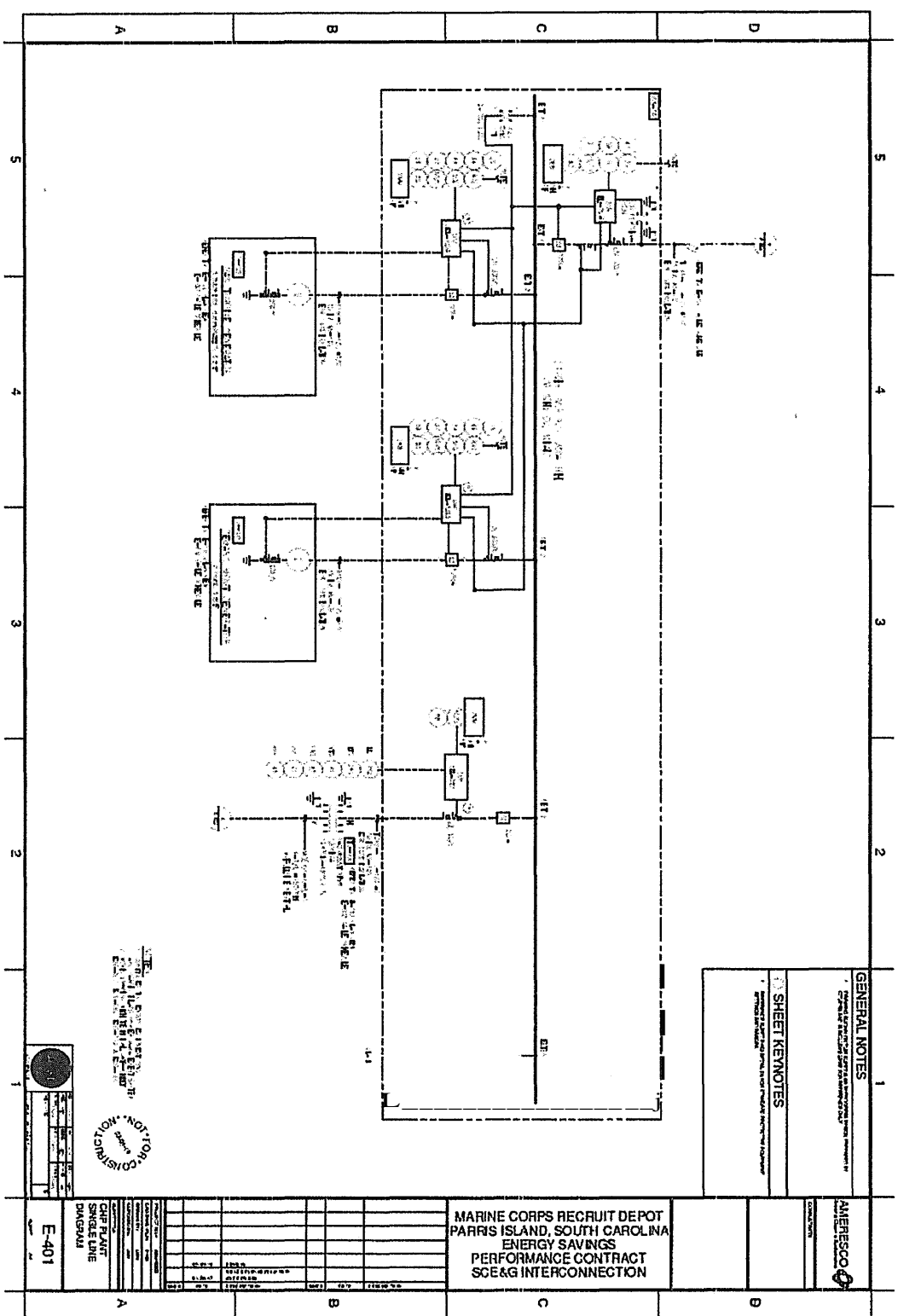
Utility Meter provided by SCE&G and QF Meter provided by Seller, both pursuant to Article VII of this Agreement.

Exhibit A-3

See Exhibit A-2 provided for Facility 2.

EXECUTION VERSION

Single-Line Drawing A-3



EXECUTION VERSION**ATTACHMENT B****Schedule of Rates (Indicative – under final review by Buyer)****Net Energy Rate:**

The Net Energy Rate shall be equal to the non-solar Energy Rates in Seller's currently effective RATE PR-1 (or successor tariff rate) adjusted, as appropriate, to reflect delivery of Net Energy at the operating voltage specified in Attachment A of this Agreement.

The Net Energy Rate per kWh contained herein will be effective for the period beginning on May 7, 2018 and shall remain in effect until the effective date of the next revision to RATE PR-1 (or successor tariff rate). This Attachment B will be updated as required to reflect currently effective RATE PR-1 (or successor tariff rate).

Buyer shall pay Seller the following rates per kWh for Net Energy delivered by the Seller at the Delivery Point. These rates shall be applied to the hourly integrated values for Net Energy delivered, rounded to the nearest whole kWh.

	<u>Summer Months</u> June through September	<u>Winter Months</u> October through May
1. On-Peak	\$0.03233/kWh	\$0.03445/kWh
2. Off-Peak	\$0.02886/kWh	\$0.03298/kWh

Determination of On-Peak and Off-Peak Hours

On-Peak Hours and Off-Peak Hours will be determined by the method specified in Seller's currently effective RATE PR-1 (or successor tariff rate).

Revisions to RATE PR-1 or Successor Rate

This Attachment B will be revised as required going forward if the structure of RATE PR-1 changes or there is a successor tariff rate in lieu of RATE PR-1.

Seller Charge:

Seller shall pay the following Seller Charge each monthly billing period: \$45.00

EXECUTION VERSION

ATTACHMENT C**Insurance Requirements**

1. **Policy Type.** The Seller will procure or cause to be procured and will maintain throughout the entire Term of this Agreement, a policy or policies of liability insurance issued by an insurer acceptable to Buyer on a standard "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the "Seller's Insurance"). A certificate of insurance shall be delivered to Buyer at least fifteen (15) calendar days prior to the start of any work at a Facility. At a minimum, Seller's Insurance shall contain (a) an endorsement providing coverage, including products liability/completed operations coverage for the Term of this Agreement, and (b) a broad form contractual liability endorsement covering liabilities (i) that might arise under this Agreement or (ii) caused by operation of a Facility or any of Seller's equipment in satisfactory and safe operating condition. Without limiting the foregoing, Seller's Insurance must be reasonably acceptable to Buyer. Any premium assessment or deductible shall be for the account of Seller and not Buyer.
2. **Policy Minimum Limits.** Seller's General Liability Insurance shall have a minimum limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, combined single limit, for bodily injury (including death) or property damage.
3. **Policy Effective Date.** To the extent that Seller's Insurance is on a "claims made" basis, the retroactive date of the policy(ies) shall be the Effective Date of this Agreement or such other date as may be agreed upon to protect the interests of Seller and Buyer. Furthermore, to the extent that Seller's Insurance is on a "claims made" basis, the Seller's duty to provide insurance coverage shall survive the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of South Carolina for actions based in contract or in tort. To the extent the Seller's Insurance is on an "occurrence" basis, such insurance shall be maintained in effect at all times by the Seller during the Term of this Agreement.
4. Seller must maintain Workers' Compensation insurance regardless of statutory requirements as outlined below:
 - (a) Workers' Compensation- Statutory Limits
 - (b) Employer's Liability - \$1,000,000
 - (c) "All-States" endorsement required
5. The Seller must provide Environmental Impairment insurance with minimum limits of \$1,000,000 per occurrence.
6. **Policy Cancellation or Alteration.** Seller's Insurance shall provide that it may not be cancelled or materially altered without prior written notice per the policy terms and conditions to Buyer. The Seller shall provide Buyer with a copy of any material

communication or notice related to the Seller's Insurance within ten (10) Business Days of the Seller's receipt or issuance thereof.

7. Additional Insured. Except for Workers' Compensation coverage, the Seller shall be designated as the named insured and "SCANA Corporation and its subsidiaries" shall be designated as an additional insured on all of Seller's insurance policies. The Seller's insurance policies shall be endorsed to be primary and non-contributory to any coverage maintained by Buyer.

8. All insurance shall be with sound insurance companies which have an A.M. Best rating of A-VII as the minimum and are authorized to do business in the state where the work is performed.

9. Neither a failure of the Seller to provide the required certificate of insurance nor Seller's submission of a certificate of insurance not in conformance with the insurance requirements stated herein shall relieve the Seller from the obligation to have in force the required insurance coverages.

10. None of Seller's insurance policies shall have any "other insurance" clause or language which would jeopardize the primacy of Seller's insurance with respect to Buyer's self-insured retention or excess insurance policies.

11. None of Seller's personnel shall be deemed for any purpose to be solely or dually employed by the Buyer. If any employee of the Seller shall recover benefits under Buyer's Workers' Compensation as a result of injury or disease sustained in, or Unemployment Insurance coverage resulting from, performing work under the Contract while on Seller's payroll, Seller shall reimburse Buyer for the full amount of such benefits and any cost or expenses incurred by Buyer related thereto.

12. Buyer shall accept, in connection with the Contract, the provisions of all the workers' compensation laws of the state in which the work is performed and any re-enactments and supplements thereto. In addition, Buyer shall maintain workers' compensation coverage for all Buyer's employees performing the work, regardless of whether required to do so by state law.

13. The insurance requirements of this Section may be satisfied in whole or in part through self-insurance by the Seller. If Seller elects to be self-insured, the Seller shall deliver to Buyer, upon Buyer's written request, a letter to Buyer that the Seller self-insures and describing the extent of such self-insurance. If Seller ceases to self-insure at any time during the Agreement Term, Seller shall immediately notify Buyer in writing and the provisions of this Section regarding comprehensive general liability insurance, automobile liability and such additional insurance as may be required by the applicable laws, rules or regulations shall be reinstated. Seller shall, at that time, be required to furnish certificates of insurance to Buyer as set forth in this Section above.